
ICANN67 | Virtual Community Forum – GAC: New gTLD Subsequent Rounds Discussion
Wednesday, March 11, 2020 – 09:30 to 10:15 CUN

MANAL ISMAIL, GAC CHAIR: Thank you very much, Gulden, and hello everyone, and welcome to our continued GAC discussion on subsequent procedures. We have two consecutive sessions today on subsequent procedures interrupted by a 15 minute break, so we have a 45 and then a 30 minute session. We had excellent discussions yesterday on closed generics TLDs and public interest commitments PICs, and we have three more issues for today's discussions on GAC early early warnings and advice, on community based application and is on applicant support program and underserved regions. So with this and to maximize the benefit from the time in our discussion, I will hand over to our topic leads Jorge and Luisa who will get us started.

LUISA PAEZ, GAC VICE-CHAIR: Thank you, it's Luisa Paez with the Canadian government, for the record. Welcome everyone to this session. I know it's been quite an intense experience having the GAC plenary sessions about subsequent procedures and at the same time having the great opportunity to attend the PDP working group on subsequent procedures, so I do thank those GAC members that have been able to attend those sessions and those that have participated and even if it's a little intimidating but you will get a sense of how the bottom up

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development process works so one big advantage of listening in and building our GAC members' capacity. I know a lot of these issues have been discussed by the PDP working group members for a few years now, obviously continues to be a challenge for governments to keep track of all the different issues but we are trying our best with the GAC leadership, myself, and Jorge and everyone in the GAC leadership with the GAC support and staff to try to keep up to speed in terms of priority items for the GAC and so for this session we have this 45 minute session, then I believe a 15 minute break and then I believe another probably 30 minutes for GAC plenary discussions on SubPro. The PDP working group will not be working today. They will meet tomorrow and from my understanding discuss GAC advice early early warnings, as well as applicant support program and if time allows, community support applications. So trying to follow sequence in giving GAC members a quick overview of the ongoing PDP discussions. We know we always have the co-chairs, Jeff and Cheryl calling in so a big thank you.

So for today we will discuss the GAC advice and early warnings and the community application and is Applicant Support Program so at least you will get a sense even though the PDP working group for this virtual meeting has not yet discussed the GAC advice or early warning nor the Applicant Support Program or community conversations, these have been going on for a while now and want to give GAC members a sense of where they are going, what are the considerations and to spark some initial discussions and at the end of the session after the break to see how we can organize the GAC a little bit in terms of next steps. So I will pass it on to Jorge from Switzerland, that he can walk us

through in terms of GAC advice and GAC early warnings providing a quick overview of what those are and then any previous GAC advice or input and then he can give an overview of what the PDP working group on subsequent procedures is discussing on this topic and of course co-chairs of the PDP, Jeff, Cheryl, please feel free to correct us or compliment. Thank you. Will pass it onto Jorge.

JORGE CANCIO: Hello everyone. Do you hear me okay?

MANAL ISMAIL, GAC CHAIR: Yes, Jorge.

JORGE CANCIO: Thank you so much, good morning, good afternoon, good evening to everyone. This is Jorge Cancio for the record. If we could go to the first slide on GAC around around and GAC advice, this would be helpful. Yeah, thank you so much. In essence we will try to summarize, will try to summarize in very quickly in a couple of minutes what the discussion has been so far and what the situation was in 2012 round and then will try to have a little bit of discussion here in the GAC in order to see what the first reactions are, and this would help for all GAC participants who are interested to participate actively tomorrow at the third GNSO subsequent procedure session which will take place between 15:45 and 17:45 UTC. So after

discussing these last days both interest interest and closed generics, GAC early warning and advice would be the third key topic of attention, I will [indiscernible] details comprehensive recommendation we have shared with all of you before he meeting, especially the GAC scorecard, so I hope you can familiarize yourself with that documentation because it includes a lot of detail. So basically GAC early warning serves as a first early warning as the name puts for any applications in the 2012 round where the GAC, be in GAC members, individually or collectively, would see potential problem. So it didn't amount to a formal objection, it didn't lead to a process that would result in a rejection of the application, but it was an indication very early after the application reviews were made public that there could an GAC advice or formal objection later.

So GAC advice, this is the second instrument for GAC intervention during the 2012 round which was issued to the ICANN board and could take three forms. The first one was let's say a kind of a veto but wasn't really a veto but it created a strong presumption for the ICANN board that the application shouldn't be approved. And in 2012 of course such GAC advice had to be on a consensus basis. So as you know on under the operating principles that couldn't be any formal objection to the GAC advice. The second form, also GAC consensus advice would be there were concerns about the particular application, and this would trigger a dialogue with the ICANN board and with the ICANN board who always had the ultimate decision would provide the [indiscernible] decision.

And the third kind of GAC advice was not so much a veto or almost veto or concerns advice but a [indiscernible] advice where the GAC would advise the board that the application should proceed if it was remediated, for instance the inclusion of an application by a public interest commitment which which we discussed yesterday. If we go to the next slide please.

We have repeatedly of course made input of the GAC to the GNSO subsequent procedures discussion, and there we have highlighted our view that those instruments, early warning and GAC advice were useful mechanisms to identify application ws public policy concern that they should remain as instruments in future ounces and that of course we would be very happy to enter into discussions about including [indiscernible] including rationale for the objection which in the case of GAC advice is something that now after 2016 is mandated by the bylaws and also giving applicants subject to early early the opportunity to enter into direct dialogue with the GAC, not specifically foreseen in 2012.

If we can go to the next slide. We could try to discuss during the next 15 minutes or so the following issues. First is taking into account what the current discussion in the PDP working group is. There are proposals there that GAC advice on applications should be only based on national or international law, and there are some in the PDP working group that are apparently reluctant to accept that such GAC advice could be based on other public policy. That would be an issue where I would ask you to make comments.

The second one is that the applicant guidebook should omit from the PDP working group from its language including 2012 that such advice would create a strong presumption for the ICANN board that the application shouldn't be approved in the case of GAC advice, almost veto as I explained before. One of the three options provided for in the 2012 an applicant good book. And here, interesting change from the side of GAC members.

And third there is also another provision in the draft recommendation from the PDP working group that after the application period has begun, the GAC should limit its advice to individual strings only based on the merits and details of the application for that string and not issue category advice as the GAC did for instance in 2012 [indiscernible] in the Beijing as vice whereas we saw yesterday it issues advice covering all the closed generics. So I leave it by that and I am of course happy to answer any questions as far as it is possible for me. And I would suggest that perhaps Manal or Luisa manage now the discussion in the GAC. Thank you.

MANAL ISMAIL, GAC CHAIR: Thank you very much, Jorge, and apologies, I got disconnected for a while but I'm back. Sorry for this. So I think the floor is now open for any comments or any questions on the topic of GAC early warning and advice. Jeff, please.

JEFF NEUMAN:

Thank you, and thanks again to all of you for allowing Cheryl and I to so actively participate. Thank you for that. Just one thing I wanted to add on the second bullet point that in isolation this bullet point looks a little bit more drastic than it actually is. What the working group is looking to recommend or the reason -- one of the reasons why the group is looking to amend that language or omit that language is because the bylaws, the new bylaws talk about the threshold for the ICANN board to reject GAC advice. And so to put this language in the guidebook in some ways conflicts with the bylaws and also creates confusion.

The second reason for this language or omitting this language is that in discussions with former ICANN board members and others in the community, the language about the strong presumption that the application shouldn't be approved seemed to be limiting the ability for applicants, ICANN and the GAC members most affected to try to get together and negotiate or figure out a mutually agreeable solution as opposed to just killing the application where it stood. So with some new rules that we're going to talk about in the group about being able to amend your application to address GAC advice and early warnings, this seemed to be the language to limit the ability for ICANN and the GAC to fix whatever concerns were expressed. Thanks.

MANAL ISMAIL, GAC CHAIR: Thank you very much, Jeff. So now we have all the necessary information to trigger our discussion from both sides, the GAC and the PDP working group as well. So Kavouss, go ahead.

IRAN: Yes, good morning, good afternoon, evening, everybody. Thank you very much, Jorge, and thank you, Luisa for all the information you provided in the last three days, very, very helpful, informative and also for some people [indiscernible] I just want to comment on what Jeff mentioned. In the second bullet it is an idea that retention of the current language, which is now [indiscernible] will create a strong presumption for the ICANN board that the application shouldn't be approved. I think we have discussed this at length. I don't think there's anything wrong with that. However, in order not to lose sight of this very important issue, just for the concern of Jeff and others and also not to be in one way or the other inconsistent with the bylaw, perhaps one way would be we retain the same language as in bullet two and after that we add see bylaw paragraph xyz, that means the policy relating to the 60 percent of the board member required to reject the GAC advice and even that one is not a total rejection, it is still gets into the discussion. So better we refer to the bylaw, relevant article of bylaw providing all information but retaining this, this is very important. So I have some, I would say, allow me, Jeff, some concern to delete this sentence. I would like to retain that but subject that or connect that to the bylaw.

This is one thing and not to ask for the floor again, I have a question from -- maybe a comment for Jorge and others. In the first bullet it is mentioned or other public policy reasons. In the national or international law includes policies, so a national law would have a policy and international law would also have a policy so I don't understand either this or that. And then I have difficulty to see what we mean by public policy reasons. Who provides that reasons. How we could say the reason is accepted or not accepted -- I have some difficulty with that. That's a little bit more subjective. So I have no problem with the national law, no problem with international law. The government and other side of the ICANN also [indiscernible] public policy for the international Internet related public issues -- I have difficulty with that. I seek some clarification why we put the reasons, public policy reasons. Who established the reasons. [indiscernible] the public law, if talking of public law, I have no difficulty, because sometimes public law overriding the national and international law but possible policy reasons, I don't understand the terms. I would be very happy if you have some clarification. Thank you.

MANAL ISMAIL, GAC CHAIR: Thank you very much, Kavouss. And I am glad to see a queue is forming. Just to note a question in the chat, I think it's an important question from Ann, and as replied in the chat, yes, I do believe it's only related to GAC consensus advice and not an individual country's advice. So I give the floor to Paul, UK, and come back to the chat.

UNITED KINGDOM:

And hello everybody and thank you very much for the presentation and is all the really thorough material being put together. Extremely valuable. I know how much work it has been but I think we should all be very grateful to you for that. I wanted to make a similar point to Kavouss, actually, regarding the second bullet point. I understand the explanation from Jeff that this is now not in line with the new bylaws. This is about giving guidance to applicants and perhaps not every applicant will read all of the bylaws. As the group discussed, instead of omitting this language but amending this language to bring it into line with the new bylaws.

And then the second question about the first bullet. When it says based on national, international law, could you say a little bit more about what that means, does it mean a loose connection with an existing law or does it mean there has to be a quite specific legal provision before the GAC can give advice? Just a bit of clarification would be helpful on that, thank you.

MANAL ISMAIL, GAC CHAIR:

Thank you very much, Paul. Jeff, would you like to respond to Kavouss and Paul before we move on to Jorge? I see you also posed a question in the chat.

JEFF NEUMAN: Sorry, took me a second to get off of mute. I think for that language, I think we just used -- and I'm trying to go back and do a little bit of a research as you are asking the question. I don't think that language was meant to change anything substantively, I think it was to bring it into line with the language used in the bylaws as well as in some of the independent review decisions that came out.

MANAL ISMAIL, GAC CHAIR: If you want to take a little bit of time to check and then get back to us, happy to give you the time.

JEFF NEUMAN: Yeah, thank you.

MANAL ISMAIL, GAC CHAIR: So let's continue with our queue. I had Jorge in the queue and also a follow-up question from Ann in the chat regarding -- so what is the status of an individual country's advice objecting to an individual application? And when this happened in the first round so those countries came back to the GAC and we had the discussion. I will either agree to provide the GAC consensus advice or not. Otherwise an individual country can always submit their concerns of course but it doesn't count as a consensus GAC advice. And I stand to be corrected by my colleagues of course. So Jorge, I'm sorry to keep you waiting. I don't see your hand right now.

JORGE CANCIO:

No problem, Manal. If I may very quickly, on Ann's question, I think if she's referring also to the early warning, because it's an early warning, it's not an advice, this is open for individual GAC members or collection a group of GAC members. So that was the instrument. But GAC advice as such is always GAC consensus advice according to our operating principles and the bylaws. As to the reference to public policy, don't take the first bullet as set in stone but basically the difference I saw in the recommendation being drafted by the PDP working group was that there were some who wanted to restrict the rationale of GAC advice to national or international law whereas others wanted to be more flexible and will include other policy or public policy reasons or motivations. And if we look and responding to Kavouss, to the function description of the GAC in the bylaws, it is our function to provide advice on the activities of ICANN as it relates to governmental matters in particular the matters where there may be an interaction between ICANN policies and various laws and international agreements or where they may affect public policy, so this is part of our function in providing advice. Thank you.

MANAL ISMAIL, GAC CHAIR:

Thank you very much, Jorge. This is very helpful. I have Kavouss and then Vernita and then I ask Jorge and Luisa whether we should be moving to the following issue or continue our discussion. But Kavouss first.

IRAN: Thank you, Manal. Manal, you have been in this business from 2001, much longer than me but I don't remember any GAC advice anyone refer to national law, his or her national law. This is a point we raised, we discussed and if we all agree it becomes GAC [indiscernible] does not have necessarily any background support that this GAC consensus advice is based on national law of the GAC membership and so on, so forth -- I have a question. Do we really need this first bullet? Did we ever refer to national or international law or any other law when we had our GAC consensus advice? The [indiscernible] much solid today, consistent advice, that means everybody does not have formal objections, agree or does not have formal objection. Does not necessarily refer to national, international law and so on. What is the necessity of bringing this first bullet? Thank you.

MANAL ISMAIL, GAC CHAIR: Thank you very much, Kavouss. Vernita please, go ahead.

VERNITA HARRIS: Good morning, everyone. Hello?

MANAL ISMAIL, GAC CHAIR: Yes, we can hear.

VERNITA HARRIS: Thank you for the presentation, this was helpful. We do think we need further conversations but in general we support them. We particularly support the time periods for issuing warnings and engaging in direct dialogue and amending the application. We think this is a positive development for future rounds because this was not allowed in GAC early warnings in 2012. We do see a challenge though -- this is a question. It does not appear to us that if a country is not part of the GAC how will an early warning be addressed? So that's a question we would have and hopefully we can have continuing discussions on that. So just to finish, we recognize that these changes may create operational challenges and [indiscernible] process in delays but we think that a specific time period for which GAC early warning can be issued and the opportunity to engage in direct dialogue of the operation should also be time bound.

MANAL ISMAIL, GAC CHAIR: Thank you very much, Vernita, and thanks everyone for sharing your views. As Kavouss mentioned, I was there for -- I think when something popped up for a country that's not a member of the GAC, they either tried to join the GAC or tried to convey their concerns through GAC members maybe like minded or so, and we had a couple of similar cases. But also let me -- I missed a question from Jeff in the chat. It reads: What do do you believe the language strong

presumption that the application does not proceed adds to the current bylaws provision? In other words, what do you believe the GAC will lose without this language? We are asking because the working group did not know the answer to that question. And as the co-chairs we want to note that we are not taking the position, just asking for information to provide to the working group. So Vernita, is this a new hand?

VERNITA HARRIS: No, sorry.

MANAL ISMAIL, GAC CHAIR: It's okay. If not, then Kavouss, I believe this is a new hand.

IRAN: Yes, I'm sorry. I have some question about bullet three. It says that the GAC advice should be issued after the application period has begun, must apply -- this is a very strong language. And then it says must apply to individual strings only. Why should not be applied to the others? And the other mentioned group application. What is group application? Are we taking community application? What is classes application? So this is not quite clear and I don't mind why this exemption or restriction would be, I think GAC is free to discuss any advice on individual or community application and so on, so forth and not to be exempted or, let's say, excluded from anything as long

as it is GAC consensus advice, why this is put? We tied up the hand the GAC totally for the advice. In the ICANN the only thing that we have is advice. If this advice which is something that helped us up for now, directly going to the board, now we're limited to issue a, b, c, -- so I don't understand except to the bullet two which should be amended by me or suggested by Paul. I don't think any reasons or valid argument or justification for the first and third bullets. Thank you.

MANAL ISMAIL, GAC CHAIR: Thank you very much, and I see a timely hand up from Jeff.

JEFF NEUMAN: Yes, thanks and so again, just to clarify -- sorry, this is Jeff Neuman. Not taking a position here, just trying to explain a little bit more background on the rationale. So this third bullet point was meant to -- let me step back, sorry. One of the primary goals of us doing our work, the subsequent procedures PDP, is to create at which predict and the certainty for not just applicants but for the community as as a whole as we go into these subsequent rounds. One of the things that made the first round less predictable but partially because we didn't know what kinds of issues we would have, but one of the things that made things less predictable was the fact that there was advice on different categories of strings that applied to dozens or even in some cases more strings. So what applicants felt and they related to our group was that there were all of a sudden new requirements that were added on their applications after they had already submitted their

applications which could have impacted or what they said anyway, impacted their business models or other models of how they were going to operate. So the hope is that we have learned about the different types of applications we're going to get, that our group then has incorporated the different categories of advice that would apply to multiple applications, and that in the future after the applications are submitted that the GAC then apply their advice to individual strings as opposed to let's say introducing a new category three type of application where there be a whole set of new requirements. So that's what it means. It's not mean to ham string GAC advice because GAC advice could apply to multiple individual strings but meant to add to predictability and of course all of these are still under discussion. Thanks.

MANAL ISMAIL, GAC CHAIR: Thank you very much, Jeff, thank you for providing the rationale, and I see Kavouss' hand go ahead, please.

GULTEN TEPE: Kavouss, we cannot hear you if you are speaking. Kavouss, we still cannot hear you. And now we cannot see you. Okay. Back again. Kavouss, if you are speaking, we cannot hear you.

MANAL ISMAIL, GAC CHAIR: So as we try to resolve this technical issue.

IRAN: I bring down the hand or -- what do I have to do?

GULTEN TEPE: We can hear you now, Kavouss.

IRAN: Sorry, very sorry to take your time and of the colleagues. I was at the meeting, several meetings, this predictability shouldn't tie our hands and I don't understand this case was given by Jeff which is properly mentioned what was discussed, but these cases should be really treated case by case. We should not have a general law or general restrictions of the GAC advice for something which is called different class of applications or group of applications. If such cases or case that Jeff mentioned comes, we should have separate case by case justifications and analysis. So I am very sorry as a member of the GAC, I would say this is difficult to agree with this bullet 3 as it stands now. So I think this has tied our hands totally. Thank you.

MANAL ISMAIL, GAC CHAIR: Thank you, Kavouss. Any further comments on this? I don't think we have the time to start discussing a new issue. We have two minutes left. So maybe I can hand back to the topic leads if there is something

we can do in the remaining time, Jorge please, go ahead.

JORGE CANCIO:

Thank you very much, Manal. And thanks to everyone for this lively discussion. I think that we still have a lot to discuss. Let me use this remaining minute for proposing the following follow-up action. And you may think about it during the break and later on we may discuss again. And this is how we [indiscernible] the work of the GAC on the subsequent procedures in the coming months and I would suggest that we follow in the language as we have been doing in the last weeks and that GAC leadership and especially the topic leads on this issue from the GAC leadership, Luisa and myself and any other vice chair who might be interested, would lead inter-sessional work on these high interest topics and other topics identified in the GAC scorecard. And the aim would be to coordinate potential GAC input into the GNSO PDP SubPro in the coming works and months, prepare ICANN 68 as we have prepared ICANN67, and also prepare GAC positions for the public comments on the draft final recommendations which is in [indiscernible] July. So I leave this for your consideration during the break, and we could discuss this later on and I give it back to Manal. Thank you.

MANAL ISMAIL, GAC CHAIR:

Thank you very much, Jorge. Excellent use of our time. So we're just on time now for the break. We have a 15 minute break. And please be back at the hour so that we can continue our discussion on

subsequent procedures -- sorry, at half past so we can continue our discussion on subsequent procedures. Thank you, everyone.

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